1 2 3 4 5 6 7	KAREN P. HEWITT United States Attorney WILLIAM A. HALL, JR. Assistant U.S. Attorney California State Bar No. 253403 United States Attorney's Office 880 Front Street, Room 6293 San Diego, California 92101-8893 Telephone: (619) 557-7046/(619) 235-2757 (Fax) Email: william.a.hall@usdoj.gov Attorneys for Plaintiff United States of America
8	UNITED STATES DISTRICT COURT
9	SOUTHERN DISTRICT OF CALIFORNIA
10 11	UNITED STATES OF AMERICA,) Criminal Case No. 08CR1002-L) DATE: May 19, 2008 Plaintiff,) TIME: 2:00 p.m.
12) Before Honorable M. James Lorenz
13 14	FRANKLIN ANTONIO FIGUEROA- MONTES, UNITED STATES' STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES
15	Defendant(s).
16	I
17	STATEMENT OF THE CASE
18	The Defendant, Franklin Antonio Figueroa-Montes (hereinafter "Defendant"), was charged
19	by a grand jury on April 2, 2008, with violating 8 U.S.C. § 1326, deported alien found in the
20	United States. Defendant was arraigned on the Indictment on April 11, 2007, and entered a plea
21	of not guilty.
22	II
23	STATEMENT OF FACTS
24	Defendant was contacted on January 28, 2008, approximately 1:55 p.m. by United States
25	Border Patrol Agents ("BPAs") in the 3500 block of Central Avenue in San Diego, California.
26	Dorder Latter rigents (Di ris) in the 3300 block of Central rivenue in San Diego, Camornia.
27	
28	2

There, Defendant admitted that he was a citizen of Honduras with no documents entitling him to enter or remain in the United States.

Defendant was placed under arrest and transported to the Chula Vista, California Border Patrol Station's processing center. At the center, BPAs used Defendant's fingerprints to perform a computerized check of Defendant's criminal and immigration history.

B. <u>DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY</u>

Preliminary criminal history reports show that Defendant has at least two felony convictions in California. In 2003, Defendant was convicted in San Diego of Assault with a Deadly Weapon, in violation of Cal. PC § 245(a)(1); he was sentenced to 313 days incarceration (time served), with three years probation. In 2004, Defendant was convicted in San Diego of Robbery, in violation of Cal. PC § 211; he was sentenced to 365 days incarceration, with three years probation. In 2005, he violated his probation in both cases and was sentenced to 4 years incarceration.

Defendant's was last removed to Mexico on April 26, 2007.

III

UNITED STATES' MOTIONS

A. <u>FINGERPRINT EXEMPLARS</u>

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

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B. RECIPROCAL DISCOVERY

To date, the United States has provided Defendant with 119 pages of discovery and one videotape, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents. The government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

CONCLUSION

For the foregoing reasons, the government respectfully requests that its motions be granted.

DATED: May 2, 2008.

Respectfully submitted,

KAREN P. HEWITT United States Attorney

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.
Assistant United States Attorney